In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 463

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WYMAN-GORDON COMPANY

No. 578

WYMAN-GORDON COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION AND CROSS-PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Company has filed a brief in response to the Board's petition for certiorari in No. 463, and a cross-petition of its own, No. 578. In its brief the Company, although contending that the court of appeals correctly held that the Board's *Excelsior* requirement

was promulgated in violation of the formal rule-making procedures of the Administrative Procedure Act, acknowledges that that issue, and the subsidiary issue whether the Board can compel compliance with that requirement through a subpoena enforcement or other judicial proceeding, warrant resolution by this Court. Thus, the Company apparently does not oppose the Board's petition.

In its cross-petition the Company urges that the Court also should review the substantive validity of the *Excelsior* requirement. But there is no need to grant the cross-petition to resolve that issue. The court of appeals did not decide the question; and the Company may argue in No. 463, as an alternative ground for upholding the judgment of the court of appeals, that the *Excelsior* requirement is invalid. Indeed, the cross-petition is untimely: it was filed on September 27, 1968, 107 days after the court of appeals entered its judgment on June 12, 1968 (Pet. No. 463, App. B, p. 13a), and no extension of time for filing was obtained.

The petition in No. 463 should be granted, and the cross-petition in No. 578 should be denied.

Respectfully submitted.

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Solicitor General.

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